Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection of Regulatory	)	
Fees for Fiscal Year 2006	)	RM-11312

COMMENTS OF AT&T INC.

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AT&T Inc., on behalf of its affiliates, ("AT&T") hereby submits the following comments on the Petition for Rulemaking ("Petition") submitted on February 6, 2006 by VSNL Telecommunications (US) Inc. ("VSNL").[1]

I. SUMMARY AND INTRODUCTION

Section 9 of the Telecommunications Act requires the Commission to collect fees to recover the costs of Commission "enforcement activities, policy and rulemaking activities, user information services and information activities" and establishes an international circuit regulatory fee based on active 64-kbps circuits.[2] The fee is "paid once for all active international

[1] *See also, Public Notice*, Feb. 15, 2006, Report No. 2756, Consumer & Governmental Affairs Bureau, Reference Information Center, Petition for Rulemakings Filed.

[2] 47 U.S.C. Sect. 159(a) & (g). The fee is determined by dividing the revenue requirement for this category by the estimated number of payment units. *Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, MD Dkt. No. 05-59, rel. Jul. 7, 2005 ("*2005 Regulatory Fee Order*"), ¶ 2. The estimated number of international bearer circuits for 2005 was "[b]ased on FY 2004 actual paid units, and adjusted for growth." *Id*., Att.B. Accordingly, the 2005 revenue requirement for this category of $7,244,186 was divided by the estimated 5,300,000

(Footnote continued on next page)

bearer circuits connecting the United States with foreign points" regardless of the type of operator or the regulatory classification of the submarine cable.[3]

VSNL asks the Commission to establish a separate international bearer circuit fee category for non-common carrier submarine cable operators.[4] VSNL contends that a portion of the international bearer circuit revenue requirement should be allocated to this new fee category based on non-common carrier operators' purportedly lesser usage of, and benefit from, the Commission's regulatory services and (p. 8) further "recommends that, as a starting point, no more than 10 percent of the total IBCF revenue requirement should be recovered from non-common carrier cable systems." VSNL also requests (*id*.) the establishment of a flat annual per-system fee for the new non-common carrier category derived by dividing the revenue requirement for this category by the number of licensed non-common carrier systems.

Because fee reductions in one category must be counter-balanced by fee increases in another category to collect the revenue amount established by Congress, VSNL's proposed approach would reduce regulatory fees for some circuits on non-common carrier submarine cable systems, but would increase fees for circuits on common carrier submarine cable systems

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payment units for this category to derive a per circuit fee of $1.37. *Id*., Att.C.

[3] Public Notice, *Compliance with Regulatory Fee Requirements by Cable Landing Licensees Operating on a Non-Common Carrier Basis*, DA 04-2027, Jul. 6, 2004, at 2.

[4] VSNL is a wholly-owned affiliate of the incumbent international carrier in India and owns two U.S.-licensed non-common carrier cable systems, Tyco Atlantic and Tyco Pacific. *Actions Taken Under Cable Landing License Act*, 20 FCC Rcd. 8557 (2005). The Commission has previously declined to adopt similar proposals for a separate fee category for non-common carrier operators put forward by Tyco. *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, 19 FCC Rcd.11662, ¶¶ 26-29 (2004) ("*2004 Regulatory Fee Order")*; *2005 Regulatory Fee Order*, ¶¶ 8-9.

and would likely also increase fees for all or most circuits on non-common carrier systems owned by facilities-based carriers. VSNL thus seeks to change the existing nondiscriminatory and competitively neutral international bearer circuit fee structure to provide different fees for different types of submarine cable licensees.

As the Commission has emphasized, Section 9 of the Act does not require each regulatory fee to be calibrated to the precise regulatory costs incurred by each service, and the Commission accordingly has repeatedly rejected prior similar claims to those put forward here by VSNL. Moreover, VSNL fails to show any change in law or regulation of the U.S. international market in recent years warranting any reduction in regulatory fees only for non-common carrier submarine cable licensees. Rather, the Commission's deregulation of the U.S. international market has significantly reduced former disparities between the Commission's treatment of non-common carrier licensees and other licensees and further supports the continued use of the existing nondiscriminatory fee structure. VSNL's proposal also overlooks the significant continuing benefits to non-common carrier licensees from the Commission's international activities in support of its longstanding goals to promote effective competition in the global telecommunications market and to encourage foreign governments to open their markets.

VSNL's further proposal, that a flat per-cable system fee should replace the present per-circuit fee, would effectively impose relatively higher fees on smaller submarine cable systems on a per-circuit basis and would thus raise the costs of circuits on smaller systems while effectively reducing these costs on larger systems. This approach would not be consistent with the statutory fee schedule set forth in Section 9 of the Act, which generally provides higher fees for licensees that are authorized to use larger amounts of spectrum or that have more revenue-

producing customers. The amount of active international bearer circuit capacity held by each licensee provides a reasonable and nondiscriminatory basis for the allocation of the revenue requirement for this fee category and the Commission accordingly should continue this existing approach.

II. VSNL SHOWS NO BASIS FOR THE PREFERENTIAL TREATMENT OF NON-COMMON CARRIER CABLES

Under the "zero-sum" fee process mandated by Section 9, any reduction in the revenue requirement and resulting fees for one category of licensees automatically increases the revenue requirement and resulting fees for other categories.[5] Consequently, the establishment of a separate fee category for non-common carrier cable operators with reduced international bearer circuit fees would increase these fees for other licensees.[6] Indeed, VSNL asserts (p. 8) that non-common carrier systems should be responsible for "no more than 10 percent" of the total international bearer circuit revenue requirement.[7]

VSNL offers no justification for changing the existing flat fees levied on all active circuits to provide lower fees for some cable operators while imposing higher fees on other operators. The Commission has rejected prior similar claims that Section 9 requires regulatory fees to be "precisely calibrated" to reductions in regulatory costs for overseeing one service,

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[5] *See also, 2004 Regulatory Fee Order*, ¶ 10 ("The fee process specified by section 9 is necessarily a 'zero-sum' proposition, since the reduction of fees in one category must be counterbalanced by increases in other categories to ensure that the total amount specified by Congress is collected.")

[6] *See also, 2005 Regulatory Fee Order*, ¶ 9 (noting that "creating a new section 9 regulatory fee category would impact other international carriers").

[7] Non-common carrier systems account for 90 percent of total U.S. licensed undersea capacity. FCC, *2004 Section 43.82 Circuit Status Data*, Dec. 2005, Table 7 (listing total available capacity of 47,472,850 circuits and total non-common carrier capacity of 42,806,610 circuits).

because the increased fees on other services that would be required to collect the revenue amount specified by Congress would "not necessarily reflect any increase in the costs related to the other services."[8] VSNL also shows no change in law or regulation supporting any such change in the Commission's fee structure. To the contrary, the Commission's deregulation of the U.S. international market has greatly reduced former disparities between the Commission's treatment of international 214 licensees and non-common carrier cable licensees. Additionally, the significant benefits to non-common carrier cable operators from the Commission's international activities further support the continuation of the present nondiscriminatory fee structure.

1. The Fee Structure Should Continue to Treat All Cable Arrangements on an Equal Basis

Submarine cables landing in the U.S. are operated as either common carrier or non-common carrier systems. The Commission has determined that "maintaining both private and common carrier regulatory options for operating a submarine cable system provides licensees and the Commission, respectively, flexibility in seeking and determining how a cable system will be operated."[9] As demonstrated by the FCC Section 43.82 report, both common carrier and non-common submarine cables serve all regions of the world.[10]

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[8] *2004 Regulatory Fee Order*, ¶¶ 6, 10. Similarly, the Commission also has previously found that it has "no acceptable methodology for allocating [the international bearer circuit] fee requirement between categories of payors," and VSNL offers none in its petition. *2005 Regulatory Fee Order*, ¶ 9.

[9] *Review of Commission Consideration of Applications under the Cable Landing License Act*, 16 FCC Rcd. 22167, ¶ 70 ("*Submarine Cable Streamlining Order*") (2001).

[10] *2004 Section 43.82 Circuit Status Data*, Dec. 2005, Table 7. U.S. submarine cable operators participate in highly competitive markets. The Commission recently found that "substantial international transport capacity exists in all regions," with low barriers to entry because "the planning and construction of a new cable system can be implemented within two years while WDM upgrades can be implemented in less than a year." *Verizon Communications, Inc. and*

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VSNL's proposed non-common carrier fee category would, by definition, exclude all international bearer circuits on common carrier cables, which are owned and operated by facilities-based carriers generally under consortium arrangements. However, U.S. licensed non-common carrier cables include both non-common carrier cables owned and operated by single investors ("private" cables), which comprise the large majority of non-common carrier cables, and a small number of non-common carrier cables that are owned and operated by facilities-based carriers under consortium arrangements. Although VSNL refers throughout its petition to "non-common carrier submarine cable operators" as the beneficiaries of its proposal, its proposed new fee category would also likely exclude all or most facilities-based carrier circuits on non-common carrier cables. VSNL's proposed non-common carrier fee category (p. 7) would be "separate from other entities subject to the [international bearer circuit fees]," and the fees for facilities-based carriers apply to their "active international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates."[11]

In the 2001 *Submarine Cable Streamlining* proceeding, the Commission adopted streamlined entry rules that "do[] not favor any particular type of cable structure over another and treat[] private and consortium cables alike."[12] The Commission did not adopt alternative proposed approaches that would have favored private cables over consortium cables and instead

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MCI, Inc., WC Dkt. No. 05-75, Memorandum Opinion and Order, rel. Nov. 17, 2005, FCC 05-184, ¶¶ 159, 166.

[11] FCC, Regulatory Fees Fact Sheet, *What You Owe-International and Satellite Services Licensees For FY 2005*, July 2005, at 3.

[12] *Submarine Cable Streamlining Order*, ¶ 16.

determined that it would treat "similarly situated applicants on equal footing . . . regardless of the ways a company might choose, for business or other reasons, to structure its cable."[13] Similar concerns to those raised in that former proceeding – that regulation favoring certain types of cable arrangements over others would increase costs for disfavored providers and distort competition – are also relevant here, and require the continued application of the existing non-discriminatory fee structure.

2. VSNL Shows No Legal or Regulatory Basis for Establishing Lower Fees for Some Cable Operators

VSNL fails to show that its proposal is consistent with Section 9 of the Act. First, as noted above, the "zero-sum" fee process under section 9 necessarily precludes any precise calibration of regulatory fees to any changes in regulatory costs for specific services. However, VSNL also fails to make the threshold showing required by Section 9 of the Act of relevant "changes in the nature of [the Commission's] services as a consequence of Commission rulemaking proceedings or changes in law."

In particular, none of the legal or regulatory changes cited by VSNL (*id.*) – the entry into force of WTO basic telecommunications commitments, the *Foreign Participation Order* implementing those commitments, the Telecommunications Act of 1996, and the Commission's international 214 and submarine cable streamlining proceedings – supports the fee amendments that are requested here. Most of these broad-based changes in Commission regulation benefited all U.S. carriers and submarine cable operators. Similarly, the Commission's order in the submarine cable streamlining proceeding applied the same streamlined entry rules to all types of submarine cables and, as noted above, expressly disavowed any favored treatment of any

[13] *Id.*

particular cable arrangement.

In similar fashion, VSNL contends (p. 12, n.24) that facilities-based carriers now impose greater regulatory costs on the Commission than do non-common carrier cable operators, as the result of the Commission's authorization and filing requirements. But VSNL fails to recognize that the Commission's substantial deregulation of the U.S. international market in recent years has greatly *reduced* former disparities in the treatment of common carrier and non-common carrier providers.

For example, besides the various streamlining measures noted above, the Commission largely eliminated tariff filing requirements for U.S. international carriers in 2001,[14] and removed the International Settlements Policy from the large majority of U.S. international routes in 2004.[15] Thus, facilities-based carriers no longer "file with the Commission certain intercarrier contracts" or "comply with the Commission's international settlements policy" on most routes, notwithstanding the assertions to the contrary by VSNL (*id*.).[16] Far from justifying the lower fees sought by VSNL, these reduced disparities between the Commission's treatment of regulated and forborne services support the continued application of the same regulatory fees to all international bearer circuits.

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[14] *2000 Biennial Regulatory Review, Policy and Rules Concerning the International Interexchange Marketplace*, 16 FCC Rcd. 10647 (2001).

[15] *International Settlements Policy Reform*, First Report and Order, 19 FCC Rcd. 5709 (2004); Public Notice, DA 04-2832, Aug. 31, 2004, *Commission Lifts the International Settlements Policy on Certain Benchmark-Compliant Routes, Seeks Further Comment on Other Routes* (increasing the number of ISP-exempt routes from 96 to 122); Public Notice, DA 04-3518, Nov. 4, 2004, *Additional U.S.-International Routes Exempted from the International Settlements Policy* (increasing the number of ISP-exempt routes from 122 to 162).

[16] Similarly, the pending rulemaking on international reporting requirements would greatly reduce the traffic and circuit status filing requirements that are also cited by VSNL (p. 12, n.24).

Additionally, VSNL's claim (p. 12) that non-common carrier operators incur "only a fraction" of the regulatory costs incurred by facilities-based carriers reflects an overly narrow view of the Commission's "enforcement activities, policy and rulemaking activities, user information services, and international activities" that are properly considered in this context.[17] VSNL ignores the regulatory costs that are incurred in connection with the Commission's international representational activities, work with foreign regulators, and other activities undertaken in support of the Commission's longstanding international regulatory goals "to promote effective competition in the global market for communications services" and "to encourage foreign governments to open their communications markets."[18]

These activities provide significant benefits to non-common carrier submarine cable operators. The Commission has emphasized that U.S. submarine cable operators are critically dependent on a variety of "essential inputs" in foreign markets, including "cable landing stations, backhaul facilities that connect the landing station with international or 'gateway' switching centers, transmission facilities from the gateway switch to the local telephone exchange and access to the local telephone exchange."[19]

The benefits to non-common carrier submarine cable licensees from Commission activities helping them to obtain and maintain access to these essential foreign inputs are

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[17] 47 U.S.C. Sect. 159(a)(1).

[18] *See, e.g.*, *Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, MD Dkt. No. 98-36, rel. Jun. 16, 1998, ¶ 62 (noting the benefits to non-common carrier satellite operators from the international representational activities of Commission staff); *Reporting Requirements for U.S. Providers of International Telecommunications Services*, IB Dkt. No. 04-112, Notice of Proposed Rulemaking, rel. Apr. 12, 2004, ¶17 (listing Commission goals in regulating the U.S. international marketplace).

[19] *Submarine Cable Streamlining Order*, ¶ 26.

properly reflected in establishing the Commission's regulatory fees. Section 9 specifically requires that the regulatory fees also "take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service area coverage, shared use versus exclusive use and other factors that the Commission determines are necessary in the public interest."[20]

III. THE COMMISSION SHOULD NOT APPLY A FLAT PER-SYSTEM FEE

VSNL's further proposal (p. 8) that non-common carrier submarine cable systems should pay "a flat annual fee per cable system" rather than for each active circuit raises similar concerns. Because non-common carrier submarine cable systems vary greatly in size, VSNL's approach would effectively result in different per-circuit fees for different cable systems, with smaller systems effectively paying substantially higher fees per circuit. The adoption of a system-based flat fee approach for all submarine cables – both non-common carrier and common carrier – would have similar results and would, in particular, adversely impact common carrier systems, which generally are much smaller in size than non-common carrier systems.

1. A Flat Per-System Fee Approach Would Raise Costs for Smaller Cable Systems

As with the other aspects of its proposal, VSNL does not clarify whether its proposed flat per-system fee structure would apply to all "non-common carrier submarine operators," as stated in its petition (p. 9), or only to non-facilities-based-carrier circuits on non-common carrier cables. But under either interpretation, this further proposal by VSNL would likely lead to smaller submarine cable systems effectively paying higher per-circuit fees, which would raise costs for these disfavored systems and limit competition.

[20] 47 U.S.C. Sect. 159(b)(1)(A).

Non-common carrier submarine cable systems vary greatly in size from the 17,010-circuit NPC system and the 120,960-circuit Guam-Philippines system to the 7,741,440-circuit TAT-14 system and the two 5,564,160-circuit systems owned by VSNL, TGN-Atlantic and TGN-Pacific.[21] There also is generally a significant difference in size between common carrier and non-common carrier systems. The average capacity of the twelve U.S.-licensed common carrier cable systems is approximately 400,000 circuits, with eight common carrier systems having less than 200,000 circuits.[22] In comparison, the average capacity of the twenty-four U.S.-licensed non-common carrier systems is approximately 1,800,000 circuits.[23] These wide disparities indicate that a flat per-system fee would likely raise fees on a per-circuit basis for smaller systems, including for most common carrier systems.[24]

2. <u>The Current Per-Circuit Fee Structure is Consistent with the Statutory Approach</u>

International bearer circuit license fees are based on active capacity, which provides a reasonable and nondiscriminatory method to allocate these fees, and reflects the similar fee structure for other Commission licensees under Section 9 of the Act. VSNL incorrectly contends (p. 9) that a per-system fee approach would be more consistent with the statutory requirement than the current fee structure.

The Commission explained in 2004 that "the statutory fee schedule generally reflects

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[21] *2004 Section 43.82 Circuit Status Data*, Dec. 2005, Table 7 (listing the total available capacity of all U.S.-licensed cable systems).

[22] *See, id.*

[23] *See, id.*

[24] For example, dividing the current international bearer circuit fee requirement among the 24 active cable systems listed in the Section 43.82 report would result in fees of almost $300,000 per cable system, which would result in increased per circuit fees for owners of cable systems with less than 220,000 active circuits and reduced per circuit fees for owners of larger systems.

higher fees for types of regulatees that are authorized to use larger amounts of, or more desirable, spectrum, or that are larger and have more customers."[25] Thus, "in the statute radio and television fees are based on the size of the markets served and carriers' fees are based on the numbers of subscribers or access lines."[26] Similarly, satellite fees are "based on the number of satellites the regulatee has in operation," which "may or may not relate to the actual costs in terms of FTEs of regulating that particular entity."[27] The same approach is reflected in the existing international bearer fees levied in accordance with the amount of active capacity held by each licensee, with all capacity subject to the same per-circuit fee.

Thus, while AT&T shares VSNL's concern that international bearer circuit fees should be reduced as much as possible, the Commission should maintain its existing nondiscriminatory and competitively neutral fee structure. In fact, VSNL indicates (p. 13), as Tyco has stated before, that the real underlying concern with respect to international bearer circuit fees is the small amount of submarine cable capacity on which these fees are calculated and paid.[28] For example, the 5,300,000 payment units that were used to calculate these fees for 2005 comprised only 12 percent of the total available submarine cable capacity listed in the December 2004 circuit status report.[29] Because the level of the fee is directly related to the number of payment

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[25] *Id*., ¶ 8.

[26] *Id*.

[27] *Id.*

[28] Comments of Tyco Telecommunications (US) Inc., MD Dkt No. 04-73, Apr. 21, 2004, at 15 (noting that "the Commission has no means of monitoring private submarine cable capacity, and thus no real way of enforcing private cable operator's payment of regulatory fees" and that "the accuracy of the Commission's estimates is only as good as operators' compliance with the Commission's regulatory fee obligations").

[29] FCC, *2003 Section 43.82 Circuit Status Data*, Dec. 2004, Table 7.

units, an increase in the number of payment units would result in lower fees for all international bearer circuits.

IV. CONCLUSION

For the reasons set forth above, VSNL fails to show that a separate international bearer circuit fee category for non-common carriers with a flat annual per-system fee would be consistent with Section 9 of the Act or otherwise serve the public interest. Instead, the Commission should continue to allocate the revenue requirement for this category on a reasonable and non-discriminatory basis by applying the same per-circuit fee to all active circuits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March 2006, I caused true and correct copies of the foregoing Comments of AT&T Inc. to be served on all parties via hand delivery, electronic mail and first class mail, postage prepaid, to their addresses listed on the attached service list.

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